

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY

Chapter 01 Board Procedures—Repealed

Administrative History

Effective date: January 15, 1970

Chapter repealed effective March 4, 2002 (29:4 Md. R. 417)

Chapter 02 Continuing Education Requirements

Authority: Health Occupations Article, §§11-308(c) and 11-309, Annotated Code of Maryland

.01 Scope.

This regulation governs all optometrists licensed to practice in the State of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Council on Optometric Practitioner Education (COPE)" means the committee of the Association of Regulatory Boards of Optometry, which acts as a national clearinghouse for continuing education courses of a state-wide, regional, or national scope.

(2) "Credit hour" means participation in 1 hour of education.

(3) "Pro bono work" means work provided in Maryland within the scope of practice of the licensee without financial reimbursement or direct financial gain

.03 Registration Renewal.

A. A licensee shall submit a signed form attesting to the licensee's completion of the required credit hours at the time of license renewal.

B. A licensee shall retain supporting documents for inspection by the Board for 4 years after the date of renewal.

C. If a licensee submits the renewal form after the deadline, the Board shall:

(1) Assess a late fee; and

(2) Audit the licensee.

D. Failure to meet continuing education requirements or failure to substantiate credit hours submitted upon request of the Board may result in suspension, revocation, or denial of licensure.

.04 Continuing Education Audit Procedure.

- A. At the time of renewal, the Board shall audit randomly 20 percent of the renewal applications.
- B. The Board shall send notification of audit to licensees to be audited.
- C. The licensee being audited shall submit to the Board, within 60 days, a report of the continuing education hours required for renewal on a form approved by the Board, along with the appropriate documentation.

.05 Course Credit.

- A. Credit for continuing professional education will be approved by the Board solely on whether or not it constitutes improvement, advancement, and extension of one's professional skill and knowledge relating to the practice of optometry.
- B. Credit may be approved for the following:
 - (1) Scheduled post-graduate or continuing education courses given by schools or colleges of optometry which have been approved by the Board;
 - (2) Courses that have received COPE approval; however, the Board reserves the right to refuse credit when its established criteria are not met;
 - (3) Courses on Practice Management directly related to optometric care, up to a maximum of 4 hours per renewal cycle;
 - (4) Courses given by local optometric societies or health-related sponsors, or both, upon prior approval by the Board.
 - (5) Courses, seminars, and lectures prepared and given by Maryland licensed optometrists for which credit will be awarded at the rate of 2 hours for preparation and 1 hour for lecture, up to a maximum of 12 hours per renewal cycle;
 - (6) Published papers in professional journals, papers approved for publication, or papers that have been peer-reviewed for which credit will be awarded at 2 hours per paper, up to a maximum of 12 hours per renewal cycle;
 - (7) Courses given in optometric or other professional journals with a post test, or Internet courses with a post test, up to a maximum of 20 hours per renewal cycle; however, these courses are subject to approval by the Board;
 - (8) Observation of ophthalmic procedures at sites approved by the Board, up to a maximum of 6 hours per renewal cycle;
 - (9) Courses in optometric ethics, Maryland optometric jurisprudence, or both, as approved by the Board, up to a maximum of 4 hours per renewal cycle; and
 - (10) Pro bono work providing patient eye care as outlined in §I of this regulation.
- C. Credit will be allowed on the basis of an hour for an hour, except for pro bono work. To receive 1 hour's credit, one shall attend or participate 1 full hour. There shall be no fractional hour credits.
- D. Credit may not be allowed when a specific product, technique, procedure, or company is promoted or promulgated for the economic benefit of a particular person, company, group, etc.
- E. Unless there are extenuating circumstances, credit is allowed only in and for the license year in which the course was actually attended.

F. The determination of whether or not a course meets these standards shall be entirely within the Board's province. The Board shall also determine whether or not credit for an entire course, or any lesser number of hours, may be granted.

G. Anyone who graduates from an accredited school or college of optometry at the beginning of a renewal cycle shall be required to complete half of the necessary continuing education credits before the end of the existing renewal cycle.

H. Anyone who graduates from an accredited school or college of optometry in the middle of a renewal cycle may not be required to complete any continuing education courses in order to renew.

I. Pro Bono Work.

(1) Pro bono work shall earn 1 credit hour for each 3 hours of approved continuing education activity, up to a maximum of 6 credit hours per renewal cycle.

(2) The licensee shall provide to the Board a written application for approval of pro bono work. The application shall include:

(a) The place where the pro bono will be provided;

(b) The type of work to be provided;

(c) The number of hours of actual work provided for which the licensee desires credit hours; and

(d) A statement guaranteeing that the work provided no financial benefit to the licensee.

(3) Upon completion of the work, the licensee shall obtain from the facility evidence of completion of pro bono hours.

(4) Credit hours for pro bono work are in the general category.

.06 Proof of Education.

A. Each optometrist is responsible for obtaining proof of hour credits and maintaining this documentation for inspection by the Board for 4 years after the date of renewal.

B. To obtain credit, one's participation shall be attested to in writing by someone in charge of the program.

C. Failure to do so shall be grounds for nonrenewal of the license.

.07 Change of Annual Requirements of Number of Hours.

The Board of Examiners, by majority voice, may change the number of required hours of continuing education, not to exceed 50 hours every 2 years. Each optometrist shall be notified of any change at the time of the renewal of the optometrist's license. The change is effective for the year following that renewal.

.08 Severability.

If any provision of these regulations or the application thereof to any person or circumstances is held invalid, this invalidity may not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are declared severable.

Chapter 03 Examination and Licensing of Optometrists

Authority: Health Occupations Article, §§11-205 and 11-302—11-308, Annotated Code of Maryland

.01 Definitions.

"Board" means the Board of Examiners in Optometry.

.02 Requirements for Licensure.

A. Preprofessional education—completion of 2 years of pre-optometric college study in an accredited institution of higher learning or its equivalent.

B. Professional education—completion of 4 scholastic years at:

- (1) An accredited college of optometry;
- (2) A university school of optometry; or
- (3) An equivalent of §B(1) or (2) of this regulation.

C. The Board will accept applications for examination from graduates of those colleges of optometry or university schools of optometry:

- (1) Endorsed by the Association of Regulatory Boards of Optometry (ARBO), formerly known as the International Association of Boards of Examiners in Optometry, Inc. (IAB); and
- (2) Accredited by the Council on Optometric Education of the American Optometric Association.

.03 Application for Licensure.

A. An applicant shall complete and file an application on the form provided by the Board on request.

B. The applicant shall submit the following information:

- (1) Full name, residence, and date and place of birth;
- (2) A recent photograph of the applicant;
- (3) Letters of recommendation from three individuals, excluding immediate family members, who can attest to the applicant's character and reputation;
- (4) All final professional transcripts of colleges or university schools of optometry;
- (5) A fee, established by the Board, which shall accompany the application;
- (6) Preprofessional transcripts.

C. Application fees are not refundable.

D. Applicants shall be notified whether they meet the standards adopted by the Board and qualify for licensure.

.04 Repealed.

.05 Form of the Examination.

A. The Board shall require and give any combination of written, oral, clinical, and practical examination.

B. Subjects for Examination. The following subjects may be included in the written, oral, clinical, and practical examinations:

- (1) Optometric jurisprudence;
- (2) Theoretic optics;
- (3) Ophthalmic optics;
- (4) Physiological and psychological optics;
- (5) Optometry—theoretic and practical;
- (6) Visual fields;
- (7) Clinical examination;
- (8) Anatomy (ocular and general);
- (9) Physiology (ocular and general);
- (10) Pathology (ocular and general);
- (11) Vision training and orthoptic training;
- (12) Contact lenses;
- (13) Low vision;
- (14) Tonometry;
- (15) Biomicroscopy;
- (16) Pharmacology;
- (17) Physiology;
- (18) Developmental vision;
- (19) Primary care.

C. The Board may require candidates for licensure to take all or part of the National Board of Examiners in Optometry's written examinations.

D. A candidate for licensure, other than a candidate qualified under Health Occupations Article, §11-305, Annotated Code of Maryland, shall obtain a score of 300 on the basic science part, a score of 300 on the clinical science part, and a score of 300 on the patient care part of the National Board of Examiners in Optometry (NBEO) examinations.

E. A candidate for licensure shall obtain a grade of 75 on the Maryland Board of Examiners in Optometry jurisprudence examination.

.06 Waiver of Examination.

Standards for licensure with partial waiver of examination are set forth in Health Occupations Article, §11-305, Annotated Code of Maryland.

.07 License Renewal.

A license holder shall pay to the Board every 2 years, on or before July 1 of the renewal year, a fee for renewal to be established by the Board.

.08 Address of Record.

A. An optometrist shall notify the Board of the optometrist's principal address in Maryland.

B. An optometrist shall report a change of principal address within 30 days.

Chapter 04 Rules of Procedure for Board Hearings

Authority: Health Occupations Article, §§11-205, 11-313, and 11-315; State Government Article, §10-206; Annotated Code of Maryland

.01 Scope.

This chapter governs procedures for disciplinary matters and hearings before the State Board of Examiners in Optometry.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" means the hearing officer assigned to preside over a hearing in cases which the Board has delegated to the Office of Administrative Hearings.

(2) "Administrative Procedure Act" means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, which governs contested cases arising from charges brought by the Board.

(3) "Administrative prosecutor" means the attorney assigned by the Office of the Attorney General to prosecute disciplinary charges for the Board.

(4) "Board" means the State Board of Examiners in Optometry.

(5) "Case resolution conference" means an informal, confidential meeting between the parties to a contested case and the Board's case resolution conference committee to discuss possible settlement of a disciplinary matter pending before the Board.

(6) "Case resolution conference committee" means a committee composed of one or more members of the Board who make recommendations to the Board regarding settlement of disciplinary matters.

(7) "Cease and desist letter" means an informal action consisting of a nonpublic letter issued by the Board ordering:

- (a) A licensee to cease doing a specified activity; or
- (b) An unlicensed individual to cease the unauthorized practice of optometry.

(8) "Charging document" means a nonpublic record issued by the Board which:

- (a) Alleges conduct by a licensee which the Board believes constitutes a violation under the Maryland Optometry Act;
- (b) Sets forth sections of the Maryland Optometry Act that the Board believes were violated; and
- (c) Provides notice to the licensee of disciplinary proceedings before the Board.

(9) "Complaint" means a written allegation received by the Board that a licensee may have violated the Maryland Optometry Act and which may be grounds for an investigation or disciplinary action by the Board.

(10) "Consent order" means a public record issued by the Board which is a final order of the Board that has been negotiated and agreed to by both the licensee and the Board to resolve a disciplinary matter.

(11) "Contested case" means a proceeding conducted pursuant to the Administrative Procedure Act.

(12) "Disposition agreement" means a formal nonpublic agreement, entered into with an impaired licensee in lieu of formal disciplinary action, where the licensee agrees to comply with certain conditions.

(13) "Final order" means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:

- (a) Denies a license;
- (b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;
- (c) Summarily suspends a license;
- (d) Dismisses charges;
- (e) Surrenders a license; or
- (f) Takes any other action that the Board is authorized to do by law.

(14) "Imperatively requires emergency action" means a finding by the Board that an emergency action be taken against a licensee pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, based on investigative facts that raise a substantial likelihood of risk of harm to the public health, safety, or welfare before a full evidentiary hearing can be held.

(15) "Informal action" means that the Board closes a case, without taking any formal disciplinary action or issuing a final order, by imposing a disciplinary sanction consisting of a:

- (a) Letter of education;

(b) Letter of admonishment;

(c) Cease and desist letter; or

(d) Consent agreement.

(16) "Investigation" means the gathering of information to assist the Board in determining whether there is reasonable cause to charge a licensee with a violation of the Maryland Optometry Act.

(17) Letter of Admonishment.

(a) "Letter of admonishment" means informal action consisting of a nonpublic letter issued by the Board closing the case, when the Board believes a licensee has engaged in conduct which violates the Maryland Optometry Act.

(b) "Letter of admonishment" includes admonishment of the licensee not to repeat the actions.

(c) "Letter of admonishment" may include an agreement that a licensee perform certain conditions in lieu of the Board taking formal disciplinary action.

(18) "Letter of education" means informal action consisting of a nonpublic letter:

(a) Issued by the Board when the Board does not believe that conduct rose to the level of a violation of the Maryland Optometry Act; and

(b) In which the Board educates the licensee concerning the laws and standards of the practice of optometry.

(19) "Letter of surrender" means a public letter accepted by the Board in which the licensee agrees to surrender the licensee's license to practice optometry, which may include conditions for the Board's acceptance of the surrender as a resolution of the case.

(20) "Licensure" means permission to engage in a health care profession regulated by the Board, which is in any form including a certificate, registration, or license.

(21) "Maryland Optometry Act" means Health Occupations Article, Title 11, Annotated Code of Maryland.

(22) "Notice of initial denial" means a nonpublic record issued by the Board by which an applicant or licensee is notified that the Board intends to deny a license, change in licensure status, or some other benefit sought by the licensee.

(23) "Penalty" means a monetary or administrative penalty imposed pursuant to Health Occupations Article, §11-314, Annotated Code of Maryland.

(24) "Post-deprivation hearing" means a contested case hearing scheduled by the Board after the Board has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, in which the licensee may challenge the Board's basis for issuing the order for summary suspension.

(25) "Predeprivation hearing" means a non-evidentiary, show cause hearing held before the Board at which the licensee has an opportunity to demonstrate to the Board why it should not:

(a) Issue an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland; or

(b) Take some other action which the Board is authorized by law to take.

(26) "Preliminary investigation" means the gathering of information to be used by the Board to determine whether the Board should dismiss a complaint or conduct further investigation to determine if there is reasonable cause to charge a licensee with a violation of the Maryland Optometry Act.

(27) "Probation" means a sanction imposed by the Board in a public final order where the licensee is:

(a) Monitored by the Board for a period of time; and

(b) Required to comply with certain conditions in order to avoid further disciplinary action.

(28) "Prohibited act" means any conduct specified in the Maryland Optometry Act which can result in sanctions or penalties.

(29) "Public record" means a document that the Board is permitted or required to disclose to the public pursuant to the State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

(30) "Recommended decision" means a nonpublic record issued to the Board by an administrative law judge which sets out proposed findings of fact, proposed conclusions of law, and a proposed sanction, or any combination of these actions.

(31) "Recusal" means the disqualification of a member of the Board to participate in a proceeding because of interest, bias, or some other reason which may interfere with the Board member's participation in a case.

(32) "Respondent" means a licensee, subject to the jurisdiction of the Board, who has been:

(a) Given notice to answer allegations concerning violations of the Maryland Optometry Act;

(b) Notified as to a potential emergency suspension pursuant to State Government Article, §10-226(c), Annotated Code of Maryland; or

(c) Notified as to a potential violation of Health Occupations Article, §11-501, Annotated Code of Maryland.

(33) "Revocation" means the removal of an optometrist's license to practice optometry.

(34) "Sanction" means an action by the Board which:

(a) Reprimands;

(b) Places on probation;

(c) Fines;

(d) Suspends or revokes a license; or

(e) Disciplines by a consent order.

(35) "Show cause hearing" means a non-evidentiary hearing held before the Board in which the licensee has the opportunity to demonstrate to the Board why the Board should not issue a proposed order or take an action that the Board is legally authorized to take.

(36) "Stay" means the withholding of an action ordered by the Board which may be subject to certain conditions.

(37) "Summary suspension" means the indefinite suspension of a license pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, where the Board believes that the action is necessary to protect the public health, safety, or welfare.

(38) "Surrender" means the voluntary relinquishing of a license to practice optometry which may be subject to certain conditions set by the Board.

(39) "Suspension" means a temporary denial of the right to use a license and is usually defined by:

- (a) A specific period of time;
- (b) Specific dates; or
- (c) Specific conditions.

.03 Confidentiality of Proceedings.

A. Except as otherwise provided by law, the proceedings of the Board are confidential and that confidentiality may not be waived by the parties.

B. The Office of Administrative Hearings' proceedings involving the adjudication of a Board contested case and the administrative law judge's recommended decision are confidential and the respondent may not waive the confidentiality of the proceedings or of the patients whose medical records or care are reflected in the record of the proceedings.

C. To the extent possible, even after a final order is entered into by the Board, the parties shall refrain from revealing legal documents, oral statements, or information that would reveal the identity of any patients referred to in the Board's order.

.04 Representation by Counsel.

A. A respondent may be represented by counsel in any matter before the Board and at any stage of the proceedings.

B. If the matter goes to a hearing, the respondent shall be represented in proper person or by an attorney who has been:

- (1) Admitted to the Maryland Bar; or
- (2) Specially admitted to practice law pursuant to Maryland Rules, Rules Governing Admission to the Bar of Maryland, Rule 14, Annotated Code of Maryland.

C. The Board may be represented by and obtain advice of counsel assigned to it by the Office of the Attorney General in all proceedings.

.05 Proceedings under Health Occupations Article, §11-313, Annotated Code of Maryland.

A. Investigation of Complaints.

(1) The Board may:

(a) Make a preliminary review of each complaint; and

(b) Recommend that cases involving complaints over which the Board has no jurisdiction be closed.

(2) The Board may send a copy of the complaint, either in its entirety or redacted, to the licensee who is the subject of the complaint to obtain a response to the allegations made in the complaint.

(3) Board subpoenas may be issued by the Board over the signature of the administrator.

B. Prosecution of Complaint.

(1) For each complaint, after reviewing any completed investigative information or reports, the Board shall:

(a) Dismiss the complaint;

(b) Close the case with informal action;

(c) Issue a cease and desist order;

(d) Refer the matter for further investigation;

(e) Refer the matter to an administrative prosecutor; or

(f) Vote to:

(i) Charge a licensee with a violation of Health Occupations Article, §11-313, Annotated Code of Maryland;

(ii) Consider the matter as a basis for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland;

(iii) Initially deny licensure or reinstatement of a license; or

(iv) Accept the surrender of a license subject to conditions acceptable to the Board.

(2) The Board may refer a complaint or other disciplinary matter to the administrative prosecutor at any time, whether or not it has voted to charge a licensee with violations of the Maryland Optometry Act.

C. Charges and Notice of Initial Denial.

(1) If the Board issues charges or a notice of initial denial, the document shall be:

(a) Served upon the respondent by certified mail at the address the respondent is required to maintain with the Board; or

(b) Hand delivered in person.

(2) Charges or a notice of initial denial shall:

- (a) Inform the respondent of the statutory basis for the charges or denial of licensure;
 - (b) Allege sufficient facts which the Board believes constitute either a basis for:
 - (i) Violation of the Maryland Optometry Act; or
 - (ii) Denial of licensure;
 - (c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing; and
 - (d) Be accompanied by a letter of procedure notifying respondent of the applicability of the Administrative Procedure Act to the Board's proceedings.
- (3) If the Board is unable to serve the charges or notice of initial denial upon the respondent as described in §C(1) of this regulation or attempt any other reasonable means to effect service, the Board may nevertheless proceed in prosecuting the case.
- (4) If the Board issues a notice of initial denial to an applicant for a license, the applicant may not withdraw the application without approval of the Board.

D. Discovery.

(1) Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

- (a) A list of the witnesses to be called;
- (b) Copies of all documents intended to be produced at the hearing; or
- (c) Both §D(1)(a) and (b) of this regulation.

(2) Mandatory Discovery.

(a) Each party shall provide to the other party not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

- (i) The name and curriculum vitae of any expert witness who will testify at the hearing; and
 - (ii) A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.
- (b) If the Board, or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.
- (c) The Board, or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:
- (i) At the prehearing conference, if scheduled; or
 - (ii) Immediately before the scheduled hearing.

(d) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in this section.

(3) Parties are not entitled to discovery of items other than those listed in §D(1) and (2) of this regulation.

(4) Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

(5) Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list:

(a) After the prehearing conference, if scheduled; or

(b) Later than 15 days before the hearing, if no prehearing conference is scheduled.

(6) The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

(7) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall be construed, whenever possible, as supplementing and in harmony with COMAR 28.02.01.

(b) In the event of a conflict between this regulation and COMAR 28.02.01, this regulation applies.

E. Case Resolution Conference.

(1) After service of charges or notice of initial denial, the Board shall offer a respondent the opportunity for a case resolution conference.

(2) At any other time during disciplinary proceedings, the Board may offer or the respondent may request a case resolution conference to discuss a disciplinary matter.

(3) The Board may deny a respondent's request for a case resolution conference except as provided in §E(1) of this regulation.

(4) Matters admitted, revealed, negotiated, or otherwise discussed at a case resolution conference are without prejudice and may not be used by the respondent, administrative prosecutor, or the Board in any subsequent proceedings, unless the information is otherwise discovered or available through another source.

(5) The Board is not bound by the recommendations of the case resolution conference committee and may:

(a) Modify a proposed settlement;

(b) Require additional conditions; or

(c) Reject the recommendation and require the respondent to proceed to a hearing.

(6) If the respondent and the administrative prosecutor are unable to reach an agreement for settlement that is recommended by the case resolution conference committee and ratified by the Board, the matter shall proceed to a hearing on the charges or on a notice of initial denial.

(7) If the respondent disagrees with the recommendation of the case resolution conference committee, the respondent may elect to proceed to a hearing in the matter, regardless of whether or not the Board has ratified the recommendation of the case resolution conference committee.

(8) Participation in a case resolution conference is not ordinarily a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings in a case.

.06 Proceedings under Health Occupations Article, §11-313, Annotated Code of Maryland—Sanctions, Hearings, and Final Order.

A. Surrender of License.

(1) The Board may require conditions for surrender of a license, including, but not limited to:

- (a) The admission of a violation of the Maryland Optometry Act;
- (b) The admission of facts;
- (c) A statement of the circumstances under which the surrender was offered or accepted;
- (d) Restrictions on future licensure;
- (e) Conditions for reinstatement of the license; or
- (f) An agreement that the respondent may not again apply for reinstatement of the license.

(2) A letter of surrender is a final order of the Board and is a public record pursuant to State Government Article, §10-611, Annotated Code of Maryland, unless the Board determines that disclosure of the surrender is not in the public interest.

B. Hearings on Charges or Notice of Initial Denial.

- (1) Hearings shall be conducted pursuant to State Government Article, Title 10, Annotated Code of Maryland.
- (2) The Board may delegate its authority to hear contested cases to the Office of Administrative Hearings.
- (3) Proceedings are not open to the public and all records, including the recommended decision, shall be treated as confidential and sealed.
- (4) If a matter has been delegated to the Office of Administrative Hearings, the administrative law judge presiding over the proceedings shall issue to the Board a recommended decision containing:
 - (a) Proposed or final findings of fact;
 - (b) Proposed or final conclusions of law;
 - (c) A proposed sanction; or
 - (d) Any combination of §B(4)(a)—(c) of this regulation pursuant to the Board's delegation.

C. Burden of Proof.

- (1) A licensee against whom the Board has issued a notice of initial denial has the burden to demonstrate by a preponderance of the evidence that the licensee is entitled to licensure or to receive the benefit sought which the Board has initially denied.
- (2) The Board has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Optometry Act.

D. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings, a party may file exceptions to the administrative law judge's proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision, before the Board makes a final decision.

(2) Within 15 days after the issuance of the recommended decision, or as otherwise specified by the administrative law judge in the recommended decision, either party may file written exceptions with the Board.

(3) Unless otherwise permitted by the Board, a party's written exceptions may not be longer than 25 double-spaced pages. The exceptions shall state with particularity:

(a) The finding of fact, conclusion of law, or other matter excepted to; and

(b) The relevant portions of the record supporting the party's exception.

(4) Within 10 days after a party's exceptions are filed with the Board, the opposing party may file an answer to exceptions.

(5) Unless otherwise permitted by the Board, a party's answer to exceptions may not be longer than 25 double-spaced pages. The answer shall state with particularity a response to an exception and the relevant portions of the record supporting that response.

(6) Unless otherwise permitted, the Board may not consider a party's response to an answer to exceptions.

(7) Unless otherwise agreed by the parties and permitted by the Board, an exceptions hearing shall be scheduled for the next meeting of the Board following receipt of the parties' exceptions and any answer to exceptions.

(8) Exceptions Hearing.

(a) An exceptions hearing shall be held before the Board.

(b) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the exceptions and answers to exceptions.

(c) The Board member presiding over the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(d) The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient progress of the hearing.

(e) The party who filed the exceptions shall proceed first and may reserve part of the allotted time for rebuttal.

(9) Unless otherwise agreed by the parties and permitted by the Board, the parties may not, in any answer to exceptions, or in the hearing on exceptions, reference any document or other evidence or offer any exhibit that is outside the record of the evidentiary hearing before the administrative law judge.

(10) If neither party files exceptions within the time specified in §D(2) of this regulation, the Board shall consider only the recommended decision of the administrative law judge and the record of the evidentiary hearing in making its final decision.

E. Board Final Decision and Order.

(1) After review of the record and deliberation, the Board shall issue a final order consisting of findings of fact, conclusions of law, and the sanction or disposition to be imposed.

(2) Upon a finding that there has been a violation of the Maryland Optometry Act, the Board may order that the licensee be fined, reprimanded, or placed on probation, or that the license be suspended or revoked.

.07 Summary Suspension of a License.

A. Pursuant to its authority under State Government Article, §10-226(c)(2), Annotated Code of Maryland, the Board shall order the summary suspension of a license if the Board determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare.

B. Notice of Intent to Summarily Suspend.

(1) Based on information gathered in an investigation or otherwise provided to the Board, the Board may vote to issue:

(a) A notice of an intent to summarily suspend a license; or

(b) An order of summary suspension.

(2) If the Board votes to issue a notice of an intent to summarily suspend a license or an order of summary suspension, the Board shall refer the matter to an administrative prosecutor for prosecution.

(3) A notice of intent to summarily suspend a license shall include, but is not limited to:

(a) A proposed order of summary suspension which is unexecuted by the Board and which includes:

(i) The statutory authority on which the action has been taken;

(ii) Allegations of fact which the Board believes demonstrate a substantial likelihood that the licensee poses a risk of harm to the public health, safety, or welfare; and

(iii) Notice to the respondent of the right to request a full hearing on the merits of the summary suspension if the Board executes the proposed order of summary suspension; and

(b) An order or summons to appear before the Board:

(i) To show cause why the Board should not execute the order of summary suspension; and

(ii) Which notifies the respondent of the consequences of failing to appear.

(4) Service.

(a) The Board shall serve a respondent with a notice of intent to summarily suspend a license not later than 5 days before a deprivation show cause hearing is scheduled before the Board.

(b) Service of the notice of intent to summarily suspend shall be made:

(i) Personally upon the respondent;

(ii) By certified mail to the address the respondent is required to maintain with the Board; or

(iii) By any other reasonable means to effect service.

(c) If the Board is unable to serve the notice of intent to summarily suspend a license upon the respondent as described in §B(4)(a) and (b) of this regulation, the Board may nevertheless proceed in prosecuting the case.

C. Predeprivation Opportunity to Be Heard.

(1) If the Board issues a notice of intent to summarily suspend a license, the Board shall offer the respondent the opportunity to appear before the Board to show cause why the respondent's license should not be suspended before the Board executes the order of summary suspension.

(2) Predeprivation Show Cause Hearing Before the Board.

(a) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension.

(b) The Board member presiding over the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(c) The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(d) The respondent and the administrative prosecutor shall each be limited to 30 minutes in which to present oral argument.

(e) The respondent shall proceed first and may reserve part of the allotted time for rebuttal.

(3) The Board member who presides over the hearing:

(a) May allow either the respondent or the administrative prosecutor to present documents or exhibits which are relevant and material to the proceedings and which are not unduly repetitious when the presiding Board member believes that the documents or exhibits are necessary in order for a fair hearing; and

(b) May not allow testimony by any witness unless agreed to by the parties and approved by the Board in advance of the hearing.

(4) The members of the Board may be recognized by the presiding member to ask questions of either party appearing before the Board.

D. Summary Suspension of a License Without Prior Notice or an Opportunity To Be Heard.

(1) In extraordinary circumstances, the Board may, after consultation with Board counsel, order the summary suspension of a license without first issuing a notice of intent to summarily suspend the license or providing a respondent with an opportunity for a predeprivation hearing if:

(a) The Board determines that the public health, safety, and welfare requires the immediate suspension of the license and that prior notice and an opportunity to be heard is not feasible;

(b) The order of summary suspension is served upon the respondent within 24 hours after its execution; and

(c) The respondent is provided with an opportunity for a hearing before the Board within 15 days after the effective date of the summary suspension.

(2) If the respondent requests a hearing pursuant to §D(1)(c) of this regulation, that hearing shall be conducted before the Board as provided in §C(2) of this regulation and shall provide the respondent with an opportunity to show cause why the Board should lift the summary suspension and reinstate the license.

E. Burdens of Production and Persuasion.

(1) In a show cause proceeding pursuant to §C of this regulation, the respondent may present argument in opposition to the allegations presented in the order for summary suspension or which otherwise demonstrate that the public health, safety, or welfare is not at risk.

(2) The administrative prosecutor bears the burden of demonstrating by a preponderance of the evidence that the health, safety, or welfare of the public imperatively requires the Board to summarily suspend the respondent's license.

F. Disposition.

(1) If the Board issues a notice of intent to summarily suspend a license before summarily suspending a license, the Board may, after the show cause hearing, vote to:

(a) Order a summary suspension;

(b) Deny the summary suspension;

(c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for stay of the summary suspension subject to certain conditions.

(2) If the Board orders a summary suspension before a show cause hearing, the Board may, at the conclusion of the hearing, vote to:

(a) Affirm its order of summary suspension;

(b) Rescind the order for summary suspension;

(c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(3) An order for summary suspension or any other order of the Board issued after the initiation of summary suspension proceedings are final orders of the Board and public records pursuant to State Government Article, §10-611, Annotated Code of Maryland.

G. Post-Deprivation Opportunity for an Evidentiary Hearing.

(1) If the Board orders the summary suspension of a license pursuant to §C or D of this regulation, the respondent shall be provided with the opportunity for an evidentiary hearing before the Board or before an administrative law judge, if the Board delegates the matter to the Office of Administrative Hearings.

(2) The respondent may request an evidentiary hearing within 10 days after the Board issues the order of summary suspension.

(3) Unless otherwise agreed by the parties, a hearing shall be provided within 45 days after the respondent's request.

(4) An evidentiary hearing may be consolidated with a hearing on charges issued by the Board which include the facts which form the basis for the summary suspension.

(5) An evidentiary hearing shall be conducted pursuant to the contested case provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(6) If the Board has delegated the matter to the Office of Administrative Hearings, the administrative law judge shall issue to the Board a recommended decision with:

- (a) Proposed or final findings of fact;
- (b) Proposed or final conclusions of law;
- (c) A proposed disposition; or
- (d) Any combination of §G(6)(a)—(c) of this regulation pursuant to the Board's delegation of the matter to the Office of Administrative Hearings.

(7) If the hearing is one combined with charges, the administrative law judge's determination as to the merits of the summary suspension shall be based only on those parts of the record that were available to the Board at the time it voted for the summary suspension.

(8) The parties may file exceptions to the recommended decision as provided in State Government Article, §10-216, Annotated Code of Maryland.

(9) An order issued by the Board after a post-deprivation evidentiary hearing is a final order of the Board and is a public record pursuant to State Government Article, §10-611, Annotated Code of Maryland.

.08 Probation and Violation of Probation Proceedings.

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board deems appropriate, including:

- (1) Re-education or completion of approved courses;
- (2) Payment of a fine;
- (3) Providing free optometric services in a Board-approved program;
- (4) Practicing under supervision;
- (5) Monitoring by the Board or by an individual or entity approved by the Board with periodic reporting to the Board;
- (6) Periodic review of a licensee's clinical practices or billing;
- (7) Periodic audits of a licensee's billing practices;
- (8) An examination by a physician or other appropriate health care provider;
- (9) Limitation of the licensee's practice;
- (10) Obtaining a passing score on an appropriate examination; or
- (11) Any other condition the Board deems appropriate for the rehabilitation or retraining of a licensee.

B. A term of probation may be defined by a specific period of time or the successful completion of certain conditions or acts by the licensee.

C. A licensee seeking termination of probation shall do so only by petitioning the Board to lift the probation when the:

- (1) Specific period of time has passed; or
- (2) Licensee has successfully completed the conditions or acts required for termination.

D. If, at any time, the Board determines that the licensee is not in compliance with the conditions of probation, the Board shall:

- (1) Charge the licensee with a violation of probation;
- (2) Take any action provided for in the final order or consent order in the event of a violation of probation, including suspension of the license;
- (3) Consider a summary suspension of the license; or
- (4) Take any other action the Board deems appropriate and which the Board is authorized to take by law.

E. Charges for Violation of Probation.

- (1) If the Board issues charges for a violation of probation, the service shall be as provided for in Regulation .05C(1) and (3) of this chapter.
- (2) The charging document for a violation of probation shall:
 - (a) Inform the respondent of the statutory provision, condition of probation, or provision of the Board's order which the Board believes has been violated;
 - (b) Allege facts that constitute a basis for a violation of probation; and
 - (c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing.
- (3) If the respondent requests a hearing on the charge of a violation of probation, the Board shall, before the hearing, provide the respondent with a case resolution conference as provided in Regulation .05E of this chapter, to discuss settlement of the matter.

F. Violation of Probation Hearing. A hearing for a violation of probation shall be held as set out in Regulation .06B of this chapter.

G. If the Board determines that the respondent has violated probation, the Board shall:

- (1) Take any action provided for in the consent order or final order in the event of a violation of probation;
- (2) Impose additional conditions of probation; or
- (3) Impose any sanction or take any other action that the Board deems appropriate and is authorized to take by law.

.09 Restoration of a License.

A. Reinstatement.

- (1) A licensee shall petition the Board for a lifting of a suspension of a license or a reinstatement following revocation or surrender of a license.

(2) A licensee who petitions the Board for reinstatement pursuant to terms and conditions for reinstatement set out in a final order, letter of surrender, or other order of the Board shall apply for reinstatement only pursuant to those terms and conditions.

(3) A licensee whose license has been revoked or surrendered for 3 years or more before filing a petition for reinstatement is not eligible for reinstatement but instead shall apply for initial licensure.

(4) In addition to complying with any conditions for reinstatement ordered by the Board, an applicant for reinstatement shall:

(a) File an application for reinstatement with the Board;

(b) Meet the requirements for reinstatement set out in COMAR 10.28.05; and

(c) Achieve a passing score on the Board's law examination.

B. Notice of Intent to Deny Reinstatement and Opportunity for a Hearing.

(1) If the Board issues a notice of intent to deny reinstatement, that notice shall be served as provided for in Regulations .05C(1) and (3) of this chapter.

(2) A notice of intent to deny reinstatement shall:

(a) Inform the applicant of the legal basis for the Board's belief that the applicant is not qualified for reinstatement, including any applicable statutory provision;

(b) Allege any facts which the Board believes support the Board's reasons for denying reinstatement; and

(c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing.

(3) If the applicant requests a hearing on the notice of intent to deny reinstatement, the Board shall, before the hearing, provide the applicant with a case resolution conference as provided in Regulation .05E of this chapter, to discuss settlement of the matter.

(4) A hearing on the notice of denial of reinstatement shall be held before the Board or be delegated to an administrative law judge and conducted pursuant to the contested case provisions of the Administrative Procedure Act.

C. If the Board grants reinstatement of a license, it may impose any restrictions or conditions on the license or the licensee's practice that it deems appropriate.

.10 Judicial Review.

A final order of the Board is subject to judicial review as provided in Health Occupations Article, §11-318, and State Government Article, §10-222, Annotated Code of Maryland.

.11 Imposition of Penalties.

The Board may impose a civil monetary penalty in lieu of or in addition to a disciplinary sanction authorized by Health Occupations Article, §11-313, Annotated Code of Maryland as provided in COMAR 10.28.13.

.12 Consideration and Notice of Board Files.

In any matter governed by this chapter, the Board may take official notice of any information contained in the Board's files.

Chapter 05 Inactive Status and Reinstatement of Expired Licenses

Authority: Health Occupations Article, §11-310, Annotated Code of Maryland

.01 Inactive Status.

The Board shall place a license on inactive status, if the licensee submits to the Board:

- A. An application for inactive status on the form required by the Board; and
- B. The inactive status fee required by COMAR 10.28.07.

.02 Application for Active Licensure by Optometrist on Inactive Status.

An optometrist who is on inactive status may apply for reinstatement of active licensure. The Board shall issue an active license if the optometrist:

- A. Submits to the Board satisfactory proof of completion of continuing education hours required of a practitioner on active status during the period of inactivity, not to exceed 125 hours; and
- B. Pays to the Board the reinstatement fee required by COMAR 10.28.07.

.03 Reinstatement of Expired License.

A. Any optometrist whose license has been expired for less than 5 years and who has not been put on inactive status may apply for reinstatement of his license. The Board may reinstate the license if the optometrist:

- (1) Submits to the Board satisfactory proof of having subsequently met the continuing education requirements required of a practitioner on active status during the period the license was expired, not to exceed 125 hours;
- (2) Otherwise meets the renewal requirements set forth in Health Occupations Article, §11-308, Annotated Code of Maryland; and
- (3) Pays to the Board the fee for the same number of years lapsed plus \$50.

B. The Board may reinstate the license of any optometrist whose license has been expired for 5 years or more and who has not been put on inactive status, or practiced optometry, only if the optometrist passes an examination recognized by the Board.

Chapter 06 Examination of Patients by Optometrists, Maintenance of Records, and Keeping of Certain Instrumentation and Equipment

Authority: Health Occupations Article, § 11-208, Annotated Code of Maryland

.01 Scope.

These regulations establish criteria the Board considers necessary to perform a minimum optometric examination, maintain certain records, and have on hand certain instrumentation and equipment required to carry out procedures for the minimum examination.

.02 Patient History.

An optometrist shall review the patient's history and shall record in writing or by other legal means including tape recorder or computer print-out, the following:

- A. Previous vision examinations, prescriptions, treatment programs;
- B. Patient's general health history including ocular health, familial involvements, current medications, and allergy history;
- C. Patient's primary complaint, symptoms, or other reason for consulting the practitioner;
- D. Vocation, avocation, or other information bearing on visual tasks to be performed.

.03 Examination.

A licensee shall perform all necessary tests, evaluations, and observations in accordance with Health Occupations Article, §11-208(a), Annotated Code of Maryland, to ensure appropriate optometric management of the patient's ocular, systemic, visual, and psychosocial conditions.

.04 Records.

A licensed optometrist shall maintain thorough records of all testing procedures, results, and case dispositions in accordance with Health-General Article, §4-403, Annotated Code of Maryland. The optometrist shall record all tests, evaluations, and observations performed, along with assessment and plan.

.05 Equipment.

A licensed optometrist shall have on hand all necessary equipment in good working condition to perform the procedures as required in Regulations .03 and .04 of this chapter.

Chapter 07 Fee Schedule

Authority: Health Occupations Article, §§11-205, 11-207, and 11-302—11-308, Annotated Code of Maryland

.01 Scope.

These regulations govern all persons licensed as optometrists by the State.

.02 Fees.

The following fees are established by the Board:

- A. Application fee \$300;
- B. Biennial renewal license fee (payable upon biennial notification) \$600;
- C. Partial waiver application fee (applicants licensed in another state for 3 or more years) \$300;
- D. Inactive license fee (those licensed in the State, but not in active practice). Fee to be placed on inactive status \$250;

E. Late fee (payable if renewal fee is received within the 30-day grace period) \$100;

F. Reinstatement fee (payable after failure to renew license for less than 5 years). Licensee shall also pay renewal fees for number of years lapsed \$50;

G. Reinstatement fee to active licensure (payable to change from inactive status to active status licensure) \$100;

H. Second office certificate \$5.

.03 Change of Fees.

Fees are subject to change by action of the Board of Examiners in Optometry. All licensees and applicants will be notified of the change.

Chapter 08 Partial Waiver of Examination

Authority: Health Occupations Article, §§11-205 and 11-302—11-308, Annotated Code of Maryland

.01 Definition.

A. In this chapter, the following term has the meaning indicated.

B. Term Defined. "Active practice" means practices optometry for at least 500 hours within 3 consecutive years.

.02 Application.

A. An applicant for licensure under these regulations:

(1) Shall complete an application;

(2) Shall pay the fee required by COMAR 10.28.07; and

(3) Shall submit proof that the applicant meets the requirements of Health Occupations Article, §11-305, Annotated Code of Maryland.

B. An applicant shall submit the following documentation with the application:

(1) Copy of a current license from another state;

(2) An affidavit from the other state licensing board attesting that the applicant became licensed in the other state by passing an examination approved by the board of optometry in that state;

(3) An affidavit from a colleague, employer, or other source approved by the Board attesting that the applicant has:

(a) Engaged in active practice immediately before applying for licensure under this chapter; or

(b) Was a teaching optometrist, a military optometrist, a supervisor or administrative optometrist, or a researcher in optometry for 3 years immediately before applying for licensure under this chapter;

(4) An affidavit from the other state licensing board attesting that the applicant has met the continuing education requirements for the state in which the applicant has been practicing;

(5) Proof of the equivalent of 3 years of continuing education hours as required of optometrists in Maryland in courses approved by the Board if the other state does not require continuing education hours; and

(6) Documentation approved by the Board that at the time the applicant was licensed in the other state, the applicant met the educational standards then required to sit for the Maryland licensure examination.

.03 Examination.

An approved applicant for licensure under these regulations shall be given a written jurisprudence examination in Maryland optometric law.

.04 Criteria.

Passing criteria shall be the same as those in effect and accepted by the Board for the current year.

Chapter 09 Advertising

Authority: Health Occupations Article, §11-313, Annotated Code of Maryland

.01 Scope.

These regulations govern advertising by optometrists in Maryland.

.02 Definitions.

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) "Advertising" means calling to the attention of the public the services one has to offer.

(2) "Board" means the State Board of Examiners in Optometry.

(3) "Optometrist" means an individual who holds a current license to practice optometry in Maryland.

.03 Advertising.

A. An optometrist may advertise the optometrist's services subject to the provisions of this regulation.

B. An advertisement may not contain statements:

(1) Containing misrepresentation of facts;

(2) Likely to mislead or deceive because in context the statements make only a partial disclosure of relevant facts;

(3) Intended to or likely to create false or unjustified expectations of favorable results;

(4) Relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to a layman;

(5) Conveying the impression that the optometrist could influence improperly any public body, official, corporation, or any person on behalf of a patient;

(6) Containing representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived;

(7) Containing representations that the optometrist is willing to perform any procedure which is illegal under the laws or regulations of Maryland or the United States;

(8) That fail to state that the practitioner is an optometrist.

C. An optometrist shall also be accountable under this regulation if the optometrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

.04 Solicitation.

A. An optometrist may not engage in solicitation, including but not limited to in-person, telephone, facsimile, internet, or direct mail solicitation which:

(1) Amounts to fraud, undue influence, intimidation, or overreaching;

(2) Contains statements which would be improper under Regulation .03B.

B. An optometrist shall also be accountable under this regulation if the optometrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

.05 Penalties for Violation.

A violation of these regulations pertaining to the use of advertising shall constitute unprofessional conduct and may result in disciplinary action against the optometrist under Health Occupations Article, §§11-205 and 11-313, Annotated Code of Maryland.

Chapter 10 Optometrist Accountability

Authority: Health Occupations Article, § 11-205(a) and 11-311, Annotated Code of Maryland

.01 Scope.

These regulations govern all optometrists licensed to practice in Maryland.

.02 Practitioner Identification.

Licensed practicing optometrists shall, in an appropriate manner, ensure that the patient knows the identity of the provider of optometric care by providing that:

A. The names of the optometrists providing services are conspicuously posted in the office;

B. The name of the licensed optometrist, or some other method of identifying the optometrist providing the optometric services, appears on any written record required by law or regulation; and

C. Treatment records are maintained and clearly identify the licensed optometrist who recommends, instructs, or prescribes vision care for the patient.

Chapter 11 Use of Diagnostic Pharmaceutical Agents

Authority: Health Occupations Article, §§11-101 and 11-404, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Credit hour" means attendance in class for 1 hour. One credit hour is interpreted to mean 1 classroom hour.

(2) "Optometric management of ocular disease" means the use of optometric services and techniques to determine the most appropriate and timely referral for ocular disease.

.02 Diagnostic Pharmaceutical Agents.

A. An optometrist certified by the Board as qualified to administer diagnostic pharmaceutical agents may use the following agents:

(1) Agents directly or indirectly affecting the pupil of the eye including the mydriatics and cycloplegics listed below:

(a) Phenylephrine hydrochloride (2.5 percent);

(b) Hydroxyamphetamine hydrobromide (1.0 percent);

(c) Cyclopentolate hydrochloride (0.5-----2.0 percent);

(d) Tropicamide (0.5 and 1.0 percent);

(e) Cyclopentolate hydrochloride (0.2 percent) with phenylephrine hydrochloride (1.0 percent);

(f) Dapiprazole hydrochloride (0.5 percent);

(g) Hydroxyamphetamine hydrobromide (1.0 percent) and tropicamide (0.25 percent); and

(2) Agents directly or indirectly affecting the sensitivity of the cornea including the:

(a) Topical anesthetics listed below:

(i) Proparacaine hydrochloride (0.5 percent), and

(ii) Tetracaine hydrochloride (0.5 percent);

(b) Diagnostic topical anesthetic and dye combinations listed below:

(i) Benoxinate hydrochloride (0.4 percent)-----fluorescein sodium (0.25 percent), and

(ii) Proparacaine hydrochloride (0.5 percent)-----fluorescein sodium (0.25 percent).

B. The optometrist may use the diagnostic pharmaceutical agents listed in §A of this regulation in strengths not greater than the strengths indicated.

C. The optometrist may not dispense diagnostic pharmaceutical agents to patients for self-administration.

.03 Certification.

A. The Board will certify an optometrist licensed to practice in Maryland as qualified to administer diagnostic pharmaceutical agents if the licensed optometrist meets one of the following criteria:

(1) Graduation from an accredited school of optometry within 7 years before applying for certification in Maryland.

(2) Certification to use diagnostic pharmaceutical agents in another state which included completion of not less than 70 credit hours in diagnostic pharmaceutical agents if the optometrist:

(a) Submits to the Board proof of certification to use diagnostic pharmaceutical agents in the other state.

(b) Submits to the Board documentation that the original certification included at least 70 credit hours in diagnostic pharmaceutical agents. This documentation may be from either:

(i) The state board that granted the original certification;

(ii) The college, university, association, or other sponsors of the 70 credit hours in diagnostic pharmaceutical agents; or

(iii) Any other organization approved by the Board.

(3) Successful completion of a course in diagnostic pharmaceutical agents of at least 70 credit hours given by an accredited college or faculty approved by the Board within 7 years before applying for certification in Maryland.

B. The credit hours taken for initial certification in diagnostic pharmaceutical agents may be included as part of the hours of continuing education required for biennial license renewal.

C. To complete the certification process, the optometrist shall submit proof of current certification in cardiopulmonary resuscitation to the Board.

.04 Renewal of Certification.

A. An optometrist certified under this chapter shall complete 6 credit hours of continuing education every 2 years in the use of diagnostic pharmaceutical agents in the diagnosis and optometric management of ocular disease.

B. The 6 credit hours of continuing education relating to the use of diagnostic pharmaceutical agents required every 2 years to maintain certification may be included as part of the hours of continuing education required for biennial license renewal.

C. An optometrist is responsible for maintaining proficiency with the current CPR procedures as recommended by the American Heart Association.

D. The Board shall grant continuing education credit for CPR recertification courses.

.05 Reporting.

An optometrist certified to use diagnostic pharmaceutical agents shall report to the Board, on the form provided by the Board, any incident of adverse reaction to the administration of diagnostic pharmaceutical agents.

Chapter 12 Therapeutic Pharmaceutical Agents

Authority: Health Occupations Article, §§11-101, 11-205, 11-302—11-309, 11-401.1, 11-404, and 11-404.1, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Adverse drug reaction" means a physical or psychological reaction experienced by a patient which:

- (a) Results from the administration of diagnostic or therapeutic pharmaceutical agents;
- (b) Poses a threat to the health of the patient; and
- (c) Requires treatment or medical intervention.

(2) "Adverse reaction" means the unintended or unexpected effect of treatment on a patient caused by or resulting from:

- (a) An adverse drug reaction; or
- (b) The removal of a superficial foreign body from the eye.

(3) "Board" means the Board of Examiners in Optometry.

(4) "Comanagement plan" means the formal, written individualized treatment plan signed and agreed to by an ophthalmologist and an optometrist with TPA certification for the treatment and management of primary open angle glaucoma.

(5) "Diagnostic pharmaceutical agent (DPA)" means a medication which directly or indirectly affects the pupil of the eye or the sensitivity of the cornea as defined in COMAR 10.28.11.

(6) "Ophthalmologist" means a physician:

- (a) Who practices in the specialty of ophthalmology and who is licensed by the Maryland Board of Physicians;
- (b) Licensed in an adjoining state who practices the specialty of ophthalmology and meets the following requirements:
 - (i) The physician's participation in the comanagement plan has been requested by a Maryland TPA-certified optometrist and a justification for the request has been submitted to the Board, and
 - (ii) The Board concludes that the physician's participation is permitted by State law and no other means of meeting patient care needs is reasonably available.

(7) "Primary open angle glaucoma" means glaucomatous changes characterized by:

- (a) Adult onset;
- (b) The presence of open, normal appearing angles as demonstrated by gonioscopy, and not otherwise explained; and

(c) One or more of the following:

(i) The appearance of optic disc damage or optic nerve fiber layer damage as evidenced by the size or shape of the optic disc cup, thinning or notching of the optic disc rim, progressive changes in the appearance of the optic disc cup, optic disc hemorrhage, or nerve fiber layer defects,

(ii) The presence of abnormalities in the visual field including arcuate defect, nasal step, paracentral scotoma, or general depression, in the absence of other causes or explanations for a visual field defect,

(iii) Intraocular pressure repeatably above 21mm Hg (by Goldmann applanation or its equivalent) at some course during observation which is thought to pose a threat to the health of the optic nerve.

(8) "Quality assurance program" means the process which includes peer review, record review, self-assessment, and data collection.

(9) "Secretary" means the Secretary of Health and Mental Hygiene.

(10) "Therapeutic pharmaceutical agent (TPA)" means a medication used for the treatment of a disease or condition of the eye as specified in Health Occupations Article, §11-404.2, Annotated Code of Maryland.

(11) "Therapeutically certified optometrist" means a licensed optometrist who has fulfilled the requirements of the Board and is certified by the Board to use therapeutic pharmaceutical agents in the practice of optometry and provides therapeutic services to patients in Maryland.

(12) "TPA record" means the optometrist's documentation of a patient's visit, the result of which involved the prescribing of medication or the performance of a procedure for treatment of a medical eye condition by a therapeutically certified optometrist.

(13) "Universal precautions" has the meaning stated in COMAR 10.06.01.02B(10).

.02 Requirements for Certification.

A. Except for an optometrist who qualifies under §B or C of this regulation, the Board shall certify an optometrist licensed to practice in Maryland as qualified to use TPAs if the licensed optometrist submits to the Board evidence satisfactory to the Board that the optometrist:

(1) Has successfully completed at least 110 hours of Board-approved TPA continuing education within 3 years before applying for certification to use TPAs;

(2) Has successfully passed the National Board of Examiners in Optometry's (NBEO) Treatment and Management of Ocular Disease (TMOD) Examination;

(3) Is currently certified by the Board to administer topical ocular DPAs; and

(4) Has successfully completed a Board-approved 8-hour course in the management of topical steroids.

B. The Board shall certify an optometrist who has graduated from an accredited school of optometry within 3 years before applying for certification to use TPAs if the optometrist:

(1) Submits proof of current certification in cardiopulmonary resuscitation (CPR) to the Board; and

(2) Completes the process to become certified to use TPAs within 3 years of the date of graduation from an accredited school of optometry.

C. If an optometrist who has graduated on or after July 1, 2005, from an accredited school of optometry recognized by the Board, is not certified within 3 years of graduation, the Board shall certify the optometrist to use TPAs if the optometrist:

(1) Has successfully completed at least 110 hours of Board-approved TPA continuing education within 3 years before applying for certification to use TPAs;

(2) Has successfully passed a pharmacology exam under §A of this regulation; and

(3) Submits proof of current certification in cardiopulmonary resuscitation (CPR) to the Board.

D. The credit hours taken for initial certification in TPAs may be included as part of the hours of continuing education required for biennial license renewal.

.03 Requirements for Renewal of Certification.

A. An optometrist certified by the Board under this chapter shall complete 50 hours of continuing education during the 2 year licensure period in order to renew the optometrist's license.

B. An optometrist certified by the Board under this chapter shall complete 30 hours of continuing education in the use and management of TPAs, during the 2-year licensure period.

C. The Board shall count the 30 hours of continuing education in TPAs toward the 50 hours of continuing education required for biennial renewal.

D. A therapeutically certified optometrist shall be certified in CPR and shall verify this certification on request by the Board.

E. Unless there are extenuating circumstances acceptable to the Board, the Board shall revoke the TPA certification of an optometrist who does not fulfill the requirements for renewal of the TPA certification.

.04 Standards of Quality for Therapeutically Certified Optometrists and Optometric Care.

A. The therapeutically certified optometrist shall provide clinical therapeutic eye care consistent with published, nationally accepted practice or clinical guidelines and standards of care.

B. The therapeutically certified optometrist shall adhere to the additional guidelines and standards of care given in C----
-U of this regulation.

C. The therapeutically certified optometrist shall ensure that:

(1) TPA records are consistent with the Subjective, Objective, Assessment, and Plan (SOAP) format;

(2) Assessment and plans are consistent with the patient's subjective and clinical findings; and

(3) TPA records are complete and legible.

D. The therapeutically certified optometrist shall file and label all TPA records in a manner which makes them readily retrievable and available for review.

E. The therapeutically certified optometrist shall document the following data, if applicable, for each TPA patient visit or communication:

(1) Date of service;

- (2) Current Procedural Terminology (CPT) Code, most recent edition;
- (3) International Classification of Diseases (ICD) Code, most recent edition;
- (4) Medication/treatment provided;
- (5) Fee charged; and
- (6) Follow-up recommendation.

F. The therapeutically certified optometrist shall document the following data as part of the patient's permanent file:

- (1) Name;
- (2) Date of birth;
- (3) Name of the doctor to whom the patient is referred, appointment date, and time of any referrals for consultation or treatment;
- (4) Record of tests administered and the results of the tests;
- (5) Written reports of other consultations, referrals received, or both; and
- (6) Documentation of the occurrence of any adverse reaction.

G. The therapeutically certified optometrist shall provide for 24-hour emergency coverage.

H. The therapeutically certified optometrist shall have a medical kit for treating anaphylactic emergencies available at each location where patients are seen.

I. The therapeutically certified optometrist shall be certified in CPR.

J. The therapeutically certified optometrist shall have a written plan for responding to emergencies, including specific plans for referral to hospital emergency rooms, emergency ambulatory centers, ophthalmologists, or other appropriate medical doctors when necessary at each location where patients are seen.

K. The therapeutically certified optometrist shall comply with:

- (1) Applicable national and State standards of infection control at each office; and
- (2) Principles of universal precautions as defined in COMAR 10.06.01.02B(10).

L. The therapeutically certified optometrist shall maintain a written tracking system to identify patients who are being followed or referred for disease-risk conditions and who fail to keep appointments.

M. The therapeutically certified optometrist shall contact a disease-risk patient who fails to keep an appointment by a telephone call and a mailed notice, if needed.

N. The therapeutically certified optometrist shall report all adverse reactions to the Board. An adverse drug reaction may be indicated by symptoms which include, but are not limited to, painful eye, pruritus, urticarial lesions, wheals, skin rash of periorbital tissues, nausea, vomiting, fainting, confusion, cessation of respiration, wheezing, clinically significant change in heart rate, or chest pain.

O. The therapeutically certified optometrist shall prescribe and administer all therapeutic pharmaceutical agents in accordance with the applicable standards of care established under Health Occupations Article, Title 11, Annotated Code of Maryland.

P. The therapeutically certified optometrist shall remove superficial foreign bodies from the eye in accordance with the applicable standards of care established under Health Occupations Article, Title 11, Annotated Code of Maryland. A therapeutically certified optometrist may remove superficial foreign bodies from the human eye only if the foreign body:

- (1) May be removed with a cotton-tipped applicator or blunt spatula; and
- (2) Has not penetrated beyond the Bowman's membrane of the cornea and is not within 2.5 millimeters of the visual axis.

Q. A therapeutically certified optometrist may not prescribe or administer a therapeutic pharmaceutical agent unless specifically authorized by law or these regulations.

R. The therapeutically certified optometrist shall report to the Board, on the form provided by the Board, within 10 working days of the occurrence, an adverse reaction resulting from administration of a therapeutic pharmaceutical agent or from the removal of a superficial foreign body from the eye. The therapeutically certified optometrist shall include in the report, at a minimum, the following:

- (1) The optometrist's name, address, and license number;
- (2) Patient information including:
 - (a) Presenting problem,
 - (b) Diagnosis,
 - (c) Agent administered, and
 - (d) Method of administration;
- (3) The adverse reaction; and
- (4) Subsequent action taken.

S. Glaucoma Comanagement.

(1) In accordance with Health Occupations Article, §11-404.2, Annotated Code of Maryland, a therapeutically certified optometrist shall perform the procedures and tests necessary to diagnose primary open angle glaucoma appropriately.

(2) A therapeutically certified optometrist may administer and prescribe topical therapeutical pharmaceutical agents for glaucoma only:

- (a) For patients with primary open angle glaucoma;
 - (b) After the optometrist refers the patient to an ophthalmologist; and
 - (c) After the ophthalmologist and optometrist jointly and promptly develop a written individualized comanagement treatment plan that is signed by the ophthalmologist and optometrist.
- (3) The treatment plan may be modified only upon the mutual consultation and consent of the optometrist and ophthalmologist, and the optometrist shall note the modification in the patient's record.

(4) The therapeutically certified optometrist shall refer the patient to an ophthalmologist at least once a year.

(5) The therapeutically certified optometrist shall make available to the ophthalmologist the results of the tests or procedures including visual fields tests, optic nerve photos, or nerve fiber layer photos performed by the optometrist, and the ophthalmologist shall make available to the optometrist the results of tests or procedures performed by the ophthalmologist.

T. The therapeutically certified optometrist and the ophthalmologist shall ensure that the glaucoma comanagement plan includes at least the following:

(1) The tests, examinations, and procedures performed that led to the diagnosis;

(2) An initial schedule of the tests and examinations necessary to treat the patient;

(3) The estimated number of times the patient may need to be seen by the optometrist and the ophthalmologist;

(4) The optometrist's name, address, and license number;

(5) The ophthalmologist's name, address, and license number;

(6) A medication plan;

(7) A target intraocular pressure (IOP) which, if exceeded, requires reassessment of the comanagement plan and appropriate therapeutic intervention to reduce the intra-ocular pressure to an acceptable level; and

(8) Criteria for surgical intervention.

U. In developing a comanagement treatment plan that ensures the maximum effectiveness for the patient, the therapeutically certified optometrist and the ophthalmologist shall consider the following:

(1) Types of agents to be administered and potential side effects;

(2) Status of the optic nerve structure, function, and its relationship to IOP;

(3) Identification of a pressure below which further optic nerve damage is unlikely to occur;

(4) Maintenance of IOP at or below the target level by initiating appropriate therapeutic intervention;

(5) Monitoring of the optic nerve and resetting the target IOP if deterioration occurs;

(6) Minimization of the side effects of treatment and their impact on the patient's vision, general health, and quality of life;

(7) Education of the patient in the management of primary open angle glaucoma disease; and

(8) Reference to accepted clinical guidelines for glaucoma follow-up management.

.05 Quality Assurance Committee.

A. In accordance with Health Occupations Article, §14-501, Annotated Code of Maryland, the Board, in consultation with the Secretary, shall appoint a Quality Assurance Committee of the Board which shall have primary responsibility for fulfilling the requirements of Health Occupations Article, §11-404.3, Annotated Code of Maryland.

B. The Quality Assurance Committee shall issue an annual report concerning its activities which responds to issues identified by the Board or the Secretary.

C. The Quality Assurance Committee shall consist of:

- (1) A member of the Board to serve as Chair of the Committee; and
- (2) At least six Maryland-licensed, therapeutically certified optometrists.

D. The Board shall appoint the members of the Quality Assurance Committee with input from the Executive Board of the Maryland Optometric Association. The President of the Board shall appoint the Chair of the Quality Assurance Committee.

E. All members of the Quality Assurance Committee shall:

- (1) Be Maryland-licensed, therapeutically certified optometrists; and
- (2) Have demonstrated experience in the utilization of therapeutic pharmaceutical agents.

F. The Quality Assurance Committee shall establish, review, and conduct the Quality Assurance Program which is outlined in Regulation .06 of this chapter.

G. The Quality Assurance Committee shall report to the Board and to the Secretary.

H. The Quality Assurance Committee shall invite, in consultation with the Maryland Society of Eye Physicians and Surgeons, one or more ophthalmologists to serve as consultants to the Committee regarding the review of TPA records. An ophthalmologist who serves as a consultant is not a member of the Quality Assurance Committee and does not have voting privileges.

I. The Quality Assurance Committee shall:

- (1) Maintain data on the number of requests received by the Board from therapeutically certified optometrists for comanagement plans in which an out-of-State physician is participating; and
- (2) Report annually to the Board on the number of requests:
 - (a) Submitted to the Board, and
 - (b) Approved by the Board.

.06 Quality Assurance Program.

A. The Quality Assurance committee shall include in the Quality Assurance Program a Record Review Program and TPA Self-Assessment as defined in §§B—C of this regulation.

B. Record Review Program.

(1) On a yearly basis, the Board shall select a minimum of 10 percent of the therapeutically certified optometrists at random to send copies of TPA records to the Board for review by the Quality Assurance Committee. The Board shall establish procedures for the therapeutically certified optometrist to select the records to be reviewed. The record review is for the purpose of enhancing the education of the participating therapeutically certified optometrists, for reviewing the appropriateness and efficacy of optometric TPA usage and practice, and for benefitting the health care of the citizens of Maryland.

(2) The Quality Assurance Committee shall review 10 TPA records of which five are glaucoma comanagement records, if applicable, for each therapeutically certified optometrist selected for review.

(3) The Quality Assurance Committee shall conduct a TPA record review of each therapeutically certified optometrist not more than once every 4 years unless the Committee determines that a therapeutically certified optometrist is in need of additional review.

(4) The Quality Assurance Committee shall review the TPA records based on the following criteria:

(a) Legibility and completeness;

(b) SOAP format;

(c) Appropriateness of tests and procedures relative to the chief complaint;

(d) Appropriateness of the assessment and interpretation of the tests and procedures in arriving at the diagnosis;

(e) Appropriateness of the treatment plan and glaucoma comanagement plan relative to the diagnosis and chief complaint;

(f) Patient outcome;

(g) Follow-up requested;

(h) Standards of care as defined in Regulation .04 of this chapter; and

(i) Documentation of medication prescribed.

(5) Based on the record review, the Quality Assurance Committee shall make recommendations, as appropriate, to a participating optometrist regarding areas of possible improvement in the optometrist's practice in the use of TPAs, including, but not limited to, any of the following:

(a) Counseling by the reviewer or reviewers, or other form of counseling as the Committee shall prescribe;

(b) Additional continuing education in a particular area of ocular therapeutic care; or

(c) Observation of, or mentoring by, an experienced therapeutically certified practitioner.

(6) The Quality Assurance Committee shall refer to the Board for appropriate action a practitioner who, as a result of record review, demonstrates a level of therapeutic care below the required standard of care or who engages in conduct which exhibits an inappropriate standard of care.

(7) The therapeutically certified optometrist shall remove the names of patients from the TPA records sent to the Quality Assurance Committee for review to respect patient confidentiality.

(8) The therapeutically certified optometrist shall be able to identify the patient whose name has been removed from the TPA record sent to the Quality Assurance Committee.

C. TPA Self-Assessment.

(1) At the time of license renewal the therapeutically certified optometrist shall complete a self-assessment checklist provided by the Quality Assurance Committee to evaluate the following aspects of the optometrist's practice utilizing TPAs, including but not limited to:

(a) Legibility and completeness of TPA records;

- (b) Documentation of patient visits, services rendered, communications;
 - (c) Documentation of subjective complaints, objective findings, clinical assessments relating to the findings of the diagnosis, and plan;
 - (d) Written office plan for handling emergencies;
 - (e) A system for patients to reach the optometrist, or to access care, in the event of an ocular emergency;
 - (f) A systematic discarding of expired medications;
 - (g) Current CPR certification;
 - (h) Infection control policy;
 - (i) Filing or labeling of TPA records in a manner which makes them retrievable and available for review;
 - (j) Filing of reports of data required to be collected and TPA self-assessment checklists in a manner which makes them readily retrievable and available for review or submission to the Board;
 - (k) Patient confidentiality;
 - (l) Patient tracking system that enables identification and follow-up to ensure treatment of patients who:
 - (i) Are being followed for disease-risk conditions, and
 - (ii) Fail to keep appointments;
 - (m) A patient tracking system that enables identification of disease-risk patients who fail to show for referral or consultation appointments;
 - (n) Procedures for appropriate termination of the doctor-patient relationship when necessary;
 - (o) Satisfactory explanation of the treatment plan so that the patient knows and understands the nature of the patient's problem or problems and the goals of the treatment regimen; and
 - (p) Advice to patients regarding the importance of progress examinations and follow-up care.
- (2) The therapeutically certified optometrist shall file and label one copy of the self-assessment checklist in a manner which makes it easily retrievable and available for review.
- (3) The therapeutically certified optometrist shall submit copies of the self-assessment checklist to the Quality Assurance Committee or the Board for review.

.07 Monitoring of Complaint Investigation.

A. The Board shall review complaints against optometrists relating to ocular therapeutics, comanagement of primary open angle glaucoma, removal of superficial foreign bodies, and other aspects of practice by a therapeutically certified optometrist.

B. The Board's procedures for handling complaints are governed by Health Occupations Article, Title 11, Annotated Code of Maryland, COMAR 10.28.04, and State Government Article, 10-201-----10-227, Annotated Code of Maryland.

C. The Board shall submit a report summarizing the Board's investigation of complaints concerning TPAs, the results of the investigations, and actions taken by the Board to the Secretary annually, at the end of the Board's fiscal year. The Board shall ensure that the reports protect the confidentiality of the optometrists and the complainants.

Chapter 13 Civil Penalties

Authority: Health Occupations Article, §§11-205, 11-313, 11-314, and 11-315, Annotated Code of Maryland

.01 Scope.

This chapter establishes the standards by which the Board may impose an administrative monetary penalty not exceeding \$5,000 on an individual licensed under Health Occupations Article, Title 11, Annotated Code of Maryland, for an act or omission prohibited under Health Occupations Article, §11-313, Annotated Code of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Board of Examiners in Optometry.

(2) "Licensee" means an individual licensed by the Board to practice optometry.

(3) "Violation" means an act or omission prohibited under Health Occupations Article, §11-313, Annotated Code of Maryland.

.03 Authority to Impose an Administrative Monetary Penalty.

A. After a hearing under Health Occupations Article, §11-315, Annotated Code of Maryland, and COMAR 10.28.04, the Board may impose an administrative monetary penalty of \$5,000 or less on a licensee who is found to have committed a violation.

B. The Board may impose a penalty under §A of this regulation:

(1) For each occasion the licensee commits a violation, not to exceed a maximum of \$5,000;

(2) In addition to suspension or revocation of a license; or

(3) Instead of suspension of a license.

.04 Factors to be Considered in the Assessment of Penalties.

In determining whether to impose a penalty and the amount of the penalty, the Board shall consider the following factors:

A. The cost of investigating and prosecuting the case against the individual;

B. The extent of actual or potential public harm caused by the violation;

C. The extent to which the individual derived a financial benefit from the violation;

D. The history of a previous violation or violations;

E. The willfulness of the improper conduct; and

F. Mitigating factors as presented by the licensee.

.05 Payment of Penalties.

A. An individual shall pay to the Board the administrative monetary penalty imposed by the Board within 30 days of the date of the Board's order.

B. The Board shall pay into the General Fund of the State all monies collected under this chapter.

C. If an individual fails to pay, in whole or in part, a penalty imposed by the Board, the Board may not restore, reinstate, or renew the license of the individual until the individual pays the penalty in full.

D. The Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings and ensure prompt payment.

Chapter 14 Code of Conduct

Authority: Health Occupations Article, §§1-212 and 11-205, Annotated Code of Maryland

.01 Scope.

This chapter governs all optometrists licensed by the State Board of Examiners in Optometry to practice in the State.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Board of Examiners in Optometry.

(2) "Inappropriate sexual language" means:

(a) A sexualized harassing comment;

(b) An eroticized or sexually provocative comment not reasonably associated with a health care matter; or

(c) An inappropriate discussion of a sexually related matter.

(3) "Patient" means the individual to whom the licensee is rendering professional service.

(4) "Sexual behavior" means:

(a) A sexual act as specified in Criminal Law Article, §3-301(e) and (g), Annotated Code of Maryland; and

(b) Sexual contact as specified in Criminal Law Article, §3-301(f), Annotated Code of Maryland.

(5) "Sexual exploitation" means a situation in which the licensee takes advantage of the unequal relationship between the licensee and a patient, a student, or an employee to obtain sexual favors.

(6) "Sexual harassment" means a deliberate or repeated comment, advance, gesture, solicitation, request, or physical contact of a sexual nature.

.03 General Conduct.

A. The licensee shall:

- (1) Apprise the patient of the risks, opportunities, and obligations associated with services available to the patient;
- (2) Make the fee for service clear, maintain adequate financial records, and confirm arrangements for financial reimbursement with the patient;
- (3) Notify the patient promptly and seek the transfer, referral, or continuation of service in relation to the patient's need or preference if the licensee anticipates the termination or interruption of service to the patient;
- (4) Obtain voluntary and informed consent from a patient for participation in research, without direct or implied deprivation or penalty for refusal to participate;
- (5) Inform the Board of unethical conduct by a licensed optometrist; and
- (6) Inform the Board about an individual who is not licensed by the Board but who represents that the individual is an optometrist and is practicing, attempting to practice, or offering to practice optometry.

B. In the capacity of or identity as a licensed optometrist, the licensee may not:

- (1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;
- (2) Misrepresent professional qualifications, education, experience, or affiliation;
- (3) Exploit a relationship with a patient for personal advantage or satisfaction;
- (4) Practice, condone, facilitate, or collaborate with discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or other preference or personal characteristic, condition, or status;
- (5) Engage or participate in an action that violates or diminishes the civil or legal rights of a patient; or
- (6) Share a fee or accept or give something of value for receiving or making a referral.

.04 Sexual Misconduct.

A. An optometrist may not engage in sexual misconduct in the practice of optometry.

B. Sexual misconduct includes, but is not limited to:

- (1) Sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or service to the client or patient, regardless of the setting in which the professional service is provided;
- (2) Sexual behavior with a client or patient under the pretext of diagnostic or therapeutic intent or benefit;
- (3) Requesting sexual favors of a client or patient;

- (4) Inappropriate touching of a client or patient in a sexual manner;
- (5) Therapeutically unnecessary discussion of sexual matters or other verbal conduct of a sexual nature while treating a patient;
- (6) Taking photographs or video tapes of a client or patient for sexual purposes;
- (7) Sexual harassment of staff or students;
- (8) Sexual exploitation; or
- (9) Inappropriate sexual language.

C. Concurrent Sexual Relationships. The licensee may not engage in either consensual or forced sexual behavior with:

- (1) A patient;
- (2) A student or supervisor over whom the licensee exercises professional authority or with whom the licensee maintains direct supervision or education while the professional relationship continues to exist; or
- (3) An individual with whom the patient has a close personal relationship, including but not limited to a relative or a significant individual in the patient's life, if there is a risk of exploitation or potential harm to the patient.

D. Relationships with Former Patients.

- (1) Except as set forth in §D(3) of this regulation, the licensee may not engage in sexual behavior with a former patient.
- (2) The licensee may not terminate professional services or a professional relationship with a patient in order to enter into a nonprofessional, social, or sexual relationship with the patient or an individual with whom the patient has a close personal relationship.
- (3) The licensee may enter into a relationship with an individual with whom the licensee's prior professional contact was of a brief, peripheral, consultative, or indirect nature, and did not constitute a therapeutic relationship.

E. Prior Sexual Relationships. The licensee may not provide professional services to an individual with whom the licensee has previously engaged in sexual behavior.

F. Sexual Harassment.

- (1) The licensee may not sexually harass a:
 - (a) Patient;
 - (b) Student; or
 - (c) Employee.
- (2) If sexually harassed by a patient, the licensee shall:
 - (a) Seek professional consultation with another licensed health professional;
 - (b) Document all action taken in the patient's record; and
 - (c) Terminate treatment and assist in a referral to another health care provider.

G. Deceit During Evaluation, Treatment, Procedure, or Service. The licensee may not suggest, recommend, or encourage the patient to engage in a sexually provocative act, including but not limited to:

- (1) Sexual contact with the licensee;
- (2) Genital stimulation by or of the patient or licensee;
- (3) Undressing by or of the licensee in the presence of the patient, or of the patient in the presence of the licensee; and
- (4) Discussion or disclosure of a sexually provocative or erotic nature, not necessitated by treatment or treatment protocol.

.05 Penalties.

Violation of this chapter may result in the Board taking action to reprimand a licensee, place the licensee on probation, or suspend or revoke the licensee's license. The Board may also impose a penalty not exceeding \$5,000.

Chapter 15 Compelling Purpose Disclosure

**Authority: Health Occupations Article, §§11-205; State Government Article, §10-617-(h)(3);
Annotated Code of Maryland**

.01 Scope.

A. This chapter permits the Board to disclose investigative information to other agencies or other entities, or both, under certain circumstances.

B. A custodian may disclose information in a certification, licensing, or investigative file if the custodian determines that a compelling public purpose exists to warrant disclosure.

.02 Disclosure for Compelling Public Purpose.

The custodian may find that a compelling public purpose warrants disclosure of information in a certification, licensing, or investigative file, regardless of whether there has been a request for the information, if the information concerns:

A. Possible criminal activity, and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;

B. A possible violation of law, and is disclosed to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or

C. Conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, and is disclosed to a law enforcement authority, administrative official, or agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

.03 Other Disclosures.

This chapter does not prevent or limit the ability of the Board to disclose general licensing information as provided in State Government Article, §10-617(h), Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

Chapter 16 Selling and Dispensing of Contact Lenses

Authority: Health-General Article, §24-301.1; Health Occupations Article, §§11-101, 11-205, and 11-404.4; Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Contact lens" means a medical device of any material or power, including plano or zero-powered, that is placed directly on:

(a) The cornea; or

(b) The cornea and sclera.

(2) "Contact lens prescription" means "replacement contact lens prescription" as defined in Health Occupations Article, §11-404.4, Annotated Code of Maryland, and any federal statute and regulations that may supersede this Health Occupations citation.

.02 Sales and Dispensing of Contact Lenses.

Contact lens prescriptions and contact lenses are prescribed, sold, dispensed, and otherwise regulated as stated in Health Occupations Article, §11-404.4, Annotated Code of Maryland, and any federal statute and regulations that may supersede this Health Occupations citation.